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BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKETS
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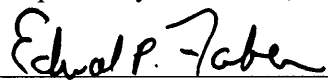
<u>In the matter of</u>)	
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COMPUTER)	
RESERVATION SYSTEMS (CRS))	DOCKET OST-97-2881-163
REGULATIONS)	DOCKET OST-97-3014-32
)	DOCKET OST-98-4775-77
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MOTION FOR LEAVE TO FILE LATE OF
WOODSIDE TRAVEL TRUST

Woodside Travel Trust submits this motion for leave to file late and the attached comments regarding the Department of Transportation's "Supplemental Advance Notice of Proposed Rulemaking" inviting comments on the Computer Reservation System Regulations (14 C.F.R., Part 255).

Woodside moves to file these comments late under 14 C.F.R. § 302.6(c). Final submission of the comments was delayed due to multiple issues being examined and unforeseen scheduling difficulties. Considering that the CRS Review has been going on for years, neither the Department nor any other part should be prejudiced by this minor delay.

Respectfully submitted,


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September 26, 2000

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**COMMENTS OF THE
WOODSIDE TRAVEL TRUST**

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**COMMENTS OF THE
WOODSIDE TRAVEL TRUST**

On July 21, 2000 the Department of Transportation ("Department") issued a "Supplemental Advance Notice of Proposed Rulemaking" inviting comments on the Department's Computer Reservation System Regulations ("CRS") (14 C.F.R., Part 255). Woodside Travel Trust ("Woodside") submits these comments on the Department's proposal. It is time for the Department to conclude its multi-year review of the CRS regulations. It is also time for the Department's regulations to include Internet ticket transactions.

U.S. Airline Competition

Concentration and consolidation in the nation's airline system continues. The nation's six largest carriers control approximately 83 percent of the overall domestic market share. According to the March 1998 Salomon Smith Barney report ("Airline

Competition at the 50 Largest U.S. Airports -- Update”), “measures of concentration at the 50 largest U.S. airports show an unprecedented degree of concentration in the airline industry....We believe that HHI, based on national air travel market share data, is flawed. We have developed a better measure of concentration based on a weighted average of airline market shares at each of the 50 largest airports in the United States, demonstrating that the concentration for the industry is at an excessive level -- a 3,949 HHI.”¹ At most major airports, the dominant carrier controls 80 to 90 percent of the airport’s passengers.

The recently proposed domestic mergers and alliances would dramatically increase those levels of concentration. According to that Salomon report, a combined UA/US alliance would control 24.7 percent of the market share at all airports in the United States.² If the United-US Airways merger and possible follow-up mergers of Northwest-American and Delta-Continental are approved, three carrier groups will control the U.S. domestic passenger market. Concentration in international service also continues to grow with fewer overall competitors. With those levels of concentration, new entry is difficult at best.

As the Airline Deregulation Act (46 U.S.C. § 40101) stated:

[T]he Secretary of Transportation shall consider the following matters, among others, as being in the public interest....

(4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices....

¹ The U.S. Department of Justice uses the Herfindahl-Hirschman Index (HHI) to determine industry concentration. It classifies industries as the following: unconcentrated (HHI below 1,000); moderately concentrated (HHI from 1,001-1,800); and highly concentrated (HHI above 1,801).

² These numbers are higher if all carriers with codeshare agreements or frequent-flier agreements are included.

(9) Preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier...unreasonably to increase prices, reduce service, or exclude competition in air transportation.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.³

The importance of the Airline Deregulation Act was again emphasized by Secretary Slater on March 10, 1999, in discussing the “Airline Protection Act,” when he stated:

When President Clinton and Vice President Gore took office, they wholeheartedly embraced the airline deregulation movement. And this Administration continues to believe that true competition is the best protection consumers can be offered. That is why we have taken strong actions to promote competition and to prevent unfair methods of competition in aviation.

The end result of well documented barriers to entry and anti-competitive marketing strategies⁴ and practices, acknowledged by government officials, is that fares are escalating and competition is decreasing. Moreover, consumers are faced with misleading information as they make travel choices.

DOT’s “*Domestic Airline Fares Consumer Report -- Fourth Report, Second Quarter 1997 Passenger and Fare Information/January, 1998*” best demonstrates the impact on consumers when competition doesn’t exist. As DOT states in the report, “In most instances, large changes in average fares are directly attributable to entry or exit by a low-cost carrier.”

³ 49 U.S.C. §40101

⁴ Subcommittee on Aviation, House Committee on Transportation and Infrastructure (April 23, 1998).

DOT's April 1996 "Low-Cost Air Service Revolution" report best states why action must be taken to prohibit anti-competitive behavior and to eliminate all barriers to entry. That study stated:

- At network hub cities where low-cost carriers do not compete, fare premiums are quite high and are increasing.
- The Department of Transportation, in cooperation with the Department of Justice, must ensure that market forces are allowed to play out freely, without the distorting effects of predatory or otherwise anti-competitive exclusionary activity by incumbent carriers against new entrants.

Unfortunately, we are seeing increased examples of unfair and deceptive practices by the nation's largest air carriers. This is occurring as market domination expands. If these actions continue, the principles that formed the basis for deregulation may be but a memory.

If we are going to have a competitive and deregulated airline system in this country, it is critical for the Department to take those steps necessary to ensure that consumers have all available travel options and that ticketing and pricing information provided to them is complete and accurate. It is for this reason that the Department needs to address CRS issues.

Need for CRS Action

All of those who have studied the status of airline competition have acknowledged that there are several different causes for the reduction in competition, however, all parties acknowledge that in many cases new entrants have been driven out of markets by behavior directed at them by incumbent carriers. An incumbent carrier that controls 80 to 90 percent of a hub airport and an entire area of the country has various anti-competitive tools available to it. Studies have shown that manipulation of computer

reservations system increases a dominant carrier's control of markets. The Department needs to continue its past efforts to eliminate CRS abuses as an anti-competitive tool.

Along with a decrease in competition, we are witnessing significant changes in ticket distribution methods and the dissemination of pricing information. The latest development in this area is the announcement by approximately 30 of the world's largest carriers that they would create a web site that will allow them to control the sale of tickets ("Orbitz"). Unfortunately, the government has failed to scrutinize these troubling developments.

Unless consumers have available complete and accurate pricing and ticketing information, they will fall victim to those attempting to put a stranglehold on competition. In its 1999 report to Congress, the Transportation Research Board recognized the importance of distribution issues, stating:

Travel agents — and the CRSs they use — provide an important service to consumers by making information available about the fare and service offerings of competing airlines. They also offer small airlines and new entrants access to a national network for marketing their services and distributing their tickets. Continued improvements to this system and the advent of new means of ticket distribution by airlines and agents — including Internet options — should be encouraged, since the potential gains from advances in distribution are so large. Nevertheless, ensuring and instilling impartiality in the system, however it evolves, should remain a priority for DOT.

Woodside urges the Department to accelerate its review of CRS regulations, which has been extended for the third time until March 31, 2001. In extending the CRS review, the Department stated that it would consider Internet ticket distribution issues.

The Department needs to complete its CRS rulemaking without further delay. Second, standards must be issued to ensure that a consumer purchasing a ticket has all available information regardless of whether that ticket is obtained from a travel agent

utilizing a CRS system, an airline web site, a general Internet site, or through Orbitz. The time for study is over; it is time to encourage competition by eliminating all factors that prevent the creation of the level playing field envisioned by the Airline Deregulation Act. It is time to make the CRS regulations complete. Airlines should not be allowed to avoid CRS requirements by creating and utilizing Internet vehicles, particularly those they control. In its July 24 notice, the Department states that the rules “are designed to prevent practices by systems and airlines related to CRS operations that are either anti-competitive or likely to cause consumers to be misled.”

The Department needs to develop standards for those who utilize web sites to sell seats. It took years to eliminate bias and manipulation. The Department should not allow that “bias” and “manipulation” to exist in this new distribution process. The first step would be to require that each site have complete and accurate fare and ticketing information. At this time, some sites do not provide listings of all fares and charges. In many cases, fares quoted may appear lower without all applicable fees and charges. This information is always presented by travel agencies.

At the June 28, 2000 Senate Commerce Committee hearing, Senator Ron Wyden charged that “a majority of the country’s airlines won’t tell on the phone what is their lowest fare.” In response to the Senator, Department of Transportation Inspector General Ken Mead stated: “I don’t know that any of them give the lowest fare available over the phone.”

As part of that exchange, American CEO Don Carty, who also is chairman of the Air Transport Association’s executive committee, said airlines’ voluntary plans did not

include a commitment to disclose the lowest Internet fare over the phone since that would drive up costs. (*Aviation Daily*, June 29, 2000)

This development is not in the public interest. The Department of Transportation should not sit by while a consumer does not know whether the fare information he or she has been quoted is accurate. This would not be tolerated in any other industry. Don Carty's excuse about the cost of providing full information is not acceptable.

As American Express stated in a filing made with the Department on December 9, 1997:

If the carrier is to offer a fare, discounted or otherwise, to the public, the fare should be the same regardless of the reservation system used. This was one of the underlying policy considerations for the concept of filed tariffs — to deter discriminatory offerings to various segments of the public. Thus, to the extent carriers offer discounted special fares on their proprietary websites which are not available to the public through the CRS, the practice seems violative of DOT law and policy.

As airline ticket booking mechanisms multiply, consumer deception increases. The Department has to decide if it is in the public interest to have systems that allow different fares to be available according to the ability of consumers to utilize computers and to access multiple web sites. Will some consumers have to pay more because of misleading information available or because they did not have an available computer? Moreover, what standards will apply for internet purchased tickets that are unused or returned for use at another time? Considering consumer dissatisfaction with the services provided by the nation's air carriers and current levels of competition, these are issues that need to be immediately addressed. Certainly, these issues should be addressed before a new web site is created by carriers that have historically attempted to manipulate the marketplace, particularly since that system has stated that it will withhold the carriers' lowest fares from other distribution. Didn't we learn the lessons of the past when carriers

owned and controlled CRS systems? With greater concentration than ever, it cannot be in the public interest for the CFO of a large carrier to have a major role in running Orbitz or any distribution system.

The Department must set standards for all fare and ticket distribution mechanisms. A consumer or a corporate travel official should receive the same protections regardless of whether a ticket is purchased through a CRS system or on a private web site.

While Woodside does not advocate the creation of detailed regulations controlling the airline industry, the Department needs to establish standards for those parties who control web sites, such as Orbitz. Those who own or control such a web site, must not be allowed to discuss fares or to “propose” fares that can be withdrawn or changed before they are publicly accessible. The Department cannot ignore these developments believing that consumers will find their way through multiple systems offering multiple fares, restrictions, and conditions. Such a decision would result in chaos and levels of complaints more significant than any consumer issues previously faced by the Department.

As to the suggestion that the large carriers want to offer more choices to the traveling public, Ivan Michael Schaeffer of Woodside suggested that Abraham Lincoln best responded to that argument when he stated:

You can fool some of the people some of the time and all of the people some of the time, but you can't fool all of the people all of the time.

Disclosure of CRS Data

To maintain hub domination, large carriers monitor the ticketing activities of travel agencies and major corporations. While large carriers have various methods for

monitoring these groups, their primary “anti-competitive tool” is the data available to them pursuant to the Department’s regulation — 14 CFR§255.10(a).

Under sec. 255.10(a) each CRS:

shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

It is essential that Section 255.10, which directs CRS vendors to provide sales and marketing data to all airlines, be eliminated. There is no legitimate basis for a large hub airline to be able to purchase data showing its competitors fares and sale information.

At a time that concentration has reached historic levels, there is no reasonable basis for a government regulation to allow large carriers to purchase data that discloses if one of its corporate customers has dared to purchase even small numbers of tickets from a new entrant carrier or if a travel agent has dared to sell a seat on a competitor.

Section 255.10 allows a dominant hub carrier to obtain information about other carrier’s transactions including the class of service, price paid, date of purchase and route selected. The data also allows a large carrier to monitor travel agencies and corporations it has agreements with and already dominates. Because of the importance of this information in combating a new entrant’s attempt to enter a hub, it makes that new entrant even more vulnerable to the onslaught of large carriers’ anti-competitive practices. In enabling a large carrier to oversee the details of travel agency and corporate business transactions and to monitor who is utilizing a new entrant’s service, the rule provides the large carriers with even more data to eliminate lower fares and, ultimately, competition.


Need For Immediate Action

During the last several years, the Department has issued multiple proposals addressing CRS issues.

In addition to taking this immediate action, the Department needs to accelerate its review of Internet ticket sale agreements and to address all CRS issues. If the Department is prepared to issue other final rules at this time, it should do so. There is no legitimate purpose for any carrier to possess this type of information involving another carrier.

The need to level the playing field has never been greater. By taking this small step, the Department will be promoting the future of deregulation, and will be supporting travelers and communities from throughout the country. The Department should not put off for one more day the amendment of Section 255.10(a). Too much is at stake.

Respectfully submitted,



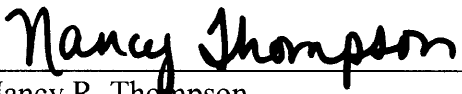
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September 26, 2000

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2000, a copy of the MOTION FOR
LEAVE TO FILE LATE OF WOODSIDE TRAVEL TRUST and COMMENTS OF
THE WOODSIDE TRAVEL TRUST were served upon the parties on the attached
service list.



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